Minutes of the Board of Adjustment meeting held on Monday, July 13, 2009, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Wendell Coombs, Chair

Joyce McStotts, Vice-Chair

Rosi Haidenthaller Jonathan Russell

Chad Wilkinson, Community Development Planner

Mark Boren, Zoning Enforcement Officer

Pat Griffiths, City Council

Citizens

Excused: Connie Howard

There was a staff review meeting held where the Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

# **APPROVAL OF MINUTES**

Wendell Coombs asked for additions or corrections to the minutes of June 8, 2009. Jonathan Russell made a motion to approve the minutes. Joyce McStotts seconded the motion.

Voice vote was taken. Minutes approved 4-0.

Mr. Coombs explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

#### CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

#### CASE #1381 - MARIA STUCKI - 5503 South Allendale Drive - Project #09-48

Maria Stucki was the applicant present to represent this request. Mark Boren reviewed the location and request for a variance of 4 feet 4 inches for the total width of the two (2) required side yards of 20 feet for a roof conversion and the addition of a new carport. The applicant is requesting a 4'4" variance to the 12 foot required side yard setback on the south side of the property between the proposed carport and the south property line making the setback 7'8" which doesn't meet the current minimum side yard setback of 8'. Murray City Code Section 17.100.180 states that a residential building lot in this zone district shall meet the following minimum yard requirement: B. Side Yard: The minimum depth of one of the side yards of a residential dwelling is eight feet (8') and the total width of the two (2) required side yards shall not be less than twenty feet (20"). The applicant has an existing carport that she would like to have removed, pitch the roof of the house, and add a new carport with the same roof line as the house, with the intent of enclosing the carport in the future making it a garage. When the dwelling was built in 1958, the Zoning Ordinance in place required lots in this area to be a minimum of 70 feet in width, and required a minimum side yard setback of 8 feet and a total width of 18 feet for the two side yard setbacks. The current R-1-8 zoning requires interior lots to be 80 feet in width (17.100.050) with a total width of 80 feet for the two side vards (17.100.080). The city department received one phone call and one email from neighbors opposed to the project on the basis of fire safety. A hardship is caused by changes in the Zoning Ordinance which over the years has increased the total of the side yard setbacks from 18 feet to 20 feet. Based on review and analysis of the

application material, subject site and surrounding area, the applicable Murray Municipal Code sections, the Community and Economic Development staff finds that the proposal meets the standards for a variance. Therefore, staff recommends approval of a variance of 2 feet (2') 10 inches (10") and not the requested variance of 4 feet (4') 4 inches (4"). Approval of the recommended variance will still provide a side yard setback of 9 feet (9') 2 inches (2") from the new carport to the south property line, which is what currently exists, and is only 10" (inches) less than the 18' (feet) required when the subdivision was approved and developed.

Maria Stucki, 5503 South Allendale Drive, stated that she may be able to make the addition work with the 2'10" variance.

Jonathan Russell asked how long Ms. Stucki has lived in the home. Ms. Stucki responded that she has lived in the home for the past 3-4 years and the carport existed prior to her purchasing the home. She stated this proposal will improve the property and new roof will be a pitched roof. She stated that she was not sure if the carport would be enclosed because her bedroom window is located on the same side of the home. She stated if the pitched roof will provide additional attic storage, and the carport and shed addition will be adequate for her needs.

No comments were made by the public.

Joyce McStotts commented that she understands that the Board must act on the request only and not a modification of the request and the staff has recommended something different than what the applicant requested. Jonathan Russell responded that the Board could make a recommendation to modify the variance request.

Chad Wilkinson, Community Development Planner, responded that the applicant did request a larger variance and the staff is not authorized to recommend a greater variance request, but may recommend a lesser variance. He stated the staff recommendation would be to grant a variance request but at a lesser amount.

Jonathan Russell made a motion to grant a variance based on the age of the home, the home is a preexisting nonconforming situation. The variance be granted as recommended by the staff for 2' (2 feet) 10" (10 inches). Seconded by Rosi Haidenthaller.

Call vote recorded by Chad Wilkinson

A Ms. McStotts
A Mr. Coombs
A Mr. Russell
A Ms. Haidenthaller

Motion passed 4-0.

Rosi Haidenthaller made a motion to approve the Findings of Fact as written for Case #1381, Maria Stucki. Seconded by Joyce McStotts.

A voice vote was taken. Motion passed 4-0.

### CASE #1382 - DAVID HUNTER - 1038 West Bullion Street - Project #09-50

David and Cheryl Hunter were present to represent this request. Chad Wilkinson, Community Development Planner, reviewed the location and request for a 2.25 foot front yard setback variance for a front yard setback of 22.75 feet to construct a new home on the property located within the R-1-8 zone. This lot is one of three lots in the Mace Subdivision subdivided from one parcel of property on November 15, 2007. A portion of the dwelling extends into the minimum 25 foot front yard setback. The shape of the lot at the front angles from 93 feet depth at the east side, has 127.7 feet depth at the west side, which follows the alignment of the street. The square footage of the home is approximately 2,800 sq.ft. There is a 20 foot wide private drive at the west side of this lot for access to the north two lots. The applicant has positioned the dwelling to the east side of the lot to meet the minimum 8 foot setback and the minimum rear yard setback of 25 feet to the dwelling. Murray City Code Section 17.100.080(A) requires that the minimum depth of a front yard shall be twenty five feet in the R-1-8 zone. The angle of the street and shape of the lot have created hardship for the applicant to position a dwelling on the lot to meet the required setbacks. The lot shape is not the standard rectangle shape with the angle of the street which creates difficulty for the applicant to meet the setbacks at the closest point of the dwelling. The east corner post and portion of the wall extends into the setback about 27 inches. The lot has special circumstances with the angle of the street and the size and shape of the lot. The lot is approximately 8,013 sq.ft. which is near the minimum lot size. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code Sections, the Community and Economic Development staff finds that the proposal meets the standards of a variance and recommends approval of the variance.

David Hunter, 1278 Springshire Lane, stated he and his wife Cheryl own the new lot addressed 1038 West Bullion Street. Mr. Hunter stated the reason for the variance is simply because of the flag lot situation and shape of the lot he has had to push the home as far to the east setback as possible and causes the front porch to encroach a little bit. The garage has been modified to help accommodate the setbacks without having to modify the roofline.

Rosi Haidenthaller asked if this property has been subdivided into three properties. David Hunter responded that he owns the southern lot, Dick Mace owns the center lot and the northern lot is currently also owned by Mr. Mace but will be developed in the future. All three lots will eventually be developed and have residences.

No comments were made by the public.

Rosi Haidenthaller made a motion to grant a 2.25 foot variance as requested for the front yard setback to be 22.75 feet for the corner portion of the home. The variance is based on the findings of fact as written by staff and the unique shape of the lot. Seconded by Jonathan Russell.

Call vote recorded by Chad Wilkinson

A Ms. McStotts
A Mr. Coombs
A Mr. Russell
A Ms. Haidenthaller

Motion passed 4-0.

Joyce McStotts made a motion to approve the Findings of Fact for Case #1382, David and Cheryl Hunter as written. Seconded by Jonathan Russell.

A voice vote was taken. Motion passed 4-0.

# CASE #1383 - DAD'S ICE CREAM - 161 West 4500 South - Project #09-52

Mike Gilbert was the applicant present to represent this request. Chad Wilkinson reviewed the location and request for landscaping and fence setback variances at the property addressed 161 West 4500 South. The M-G-C zoning ordinance regulation requires 10 foot depth of landscaping along all frontage areas not occupied by drive accesses. Landscaping adjacent to off street parking within the yard area will require a minimum of 5 feet depth. The fence regulations require a 6 foot high fence to be located a minimum of 10 feet setback from the front property or street right of way line. The applicants are requesting variances in order to not install the required landscaping and request a variance in order to not locate the 6 foot high fence a minimum of 10 feet setback behind the frontage landscaping. Murray Municipal Code Section 17.152.100(A) requires 10 feet depth of landscaping along all frontage areas (public or private streets) not occupied by drive accesses. Code Section 17.1523.100(D) requires landscaping adjacent to off-street parking within the yard area to be installed with a minimum 5 foot depth. Code Section 17.64.030 requires a fence to be located a minimum of 10 feet setback from the front property line or street right-of-way behind the landscaping. The original building was constructed about 1977 and landscaping was required at the time to meet the zoning regulations which included 10 foot depth of frontage landscaping. With review and current inspection, portions of the required landscaping were never installed on this property and another area fronting 4500 South has been replaced with rocks and will need to be upgraded with landscaping. A site plan review meeting was held with the applicants on February 2, 2009 with the requirement to move the fence and install the landscaping. Mayor Snarr approved a deferral agreement for the landscaping improvements to be installed. A business license was issued due to the applicants signing a deferral agreement and posting \$2,500 to install the landscaping improvements to be completed by July 1, 2009. The circumstances attached to this property are similar to other commercial properties in the area. Many businesses have complied with landscaping and fencing regulations. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal code sections, the Community and Economic Development staff finds that the proposal does not meet the standards for the proposed variances and staff recommends denial of the variances.

Rosi Haidenthaller clarified that the site plan review meeting with the city staff and applicant was held on February 2, 2009. She asked whether the property owner or lessee agreed to install the landscaping and fencing at that meeting. Mr. Wilkinson responded he was unsure whether it was the property owner or the lessee. Mr. Wilkinson stated that conditions of Site Plan approval or of a Conditional Use Permit apply to a property and ultimately is the property owners responsibility to meet those conditions of approval.

Mike Gilbert, 161 West 4500 South, stated that if they are required to move the fence back they would not be able to accommodate eight of their work vehicles which would in essence put them out of business. He stated if the landscaping is required to be installed it will also eliminate 5 more additional parking stalls, and then they will not meet the minimum parking requirements.

Jonathan Russell stated that it appears that the business has outgrown the property. Mr. Gilbert stated the building had out grown the property before they even moved in. He stated that Kimball Construction, the previous tenant, installed additional office space and the parking lot was approved as it currently is striped. Mr. Gilbert stated that when his business moved to the site he was informed that his business doesn't fit the requirements from the previous tenant. He stated there is rock landscaping which looks better than having overgrown weeds and twine, etc.

Joyce McStotts asked Mr. Gilbert if he owns the property or is renting the property. Mr. Gilbert stated he is in the process of buying the property with a lease to own contract.

Wendell Coombs asked about the rear of the property. Mr. Gilbert responded that they store their vehicles at the rear of the property.

Rosi Haidenthaller asked Mr. Gilbert if he was the person present at the Site Plan Review meeting was held in February of 2009, which was when the city made it known that the improvements would be required for approval. Mr. Gilbert responded that he was at the meeting and there was a misunderstanding as to when and what would need to be completed and who was supposed to talk to the current owner. Mr. Gilbert stated that the property owner lives in California during the winter months and he needed time to discuss with the owner the requirement for the property improvements.

Rosi Haidenthaller asked if the parking regulations would not be able to be met for Mr. Gilbert's particular type of business or any type of business. Chad Wilkinson responded that the nature of the Dad's Ice Cream business has a lot of delivery trucks that are stored on the site which is a separate issue from the required number of parking based on the building square footage and use. He stated the building is essentially a distribution service type calculation for parking regulations. He stated that there is adequate room on the site to meet the minimum parking standards, but the question is whether there is adequate parking on the site to meet the business needs.

Rosi Haidenthaller asked if a hardship could be considered by making the tenant conform to the landscaping issues that they won't be able to conduct business on this site. Mr. Wilkinson responded that when persons apply for development applications, part of that process is selecting a site that has adequate room for their type of operation. When the applications are reviewed it is reviewed for minimum code standards. It is up to the applicant to determine whether or not they can meet those standards. He stated that the site itself may not be large enough for a particular use to operate, but the minimum code standards still apply. Mr. Wilkinson stated that the Site Plan Review was approved for Dad's Ice Cream several months ago with conditions of approval. Those conditions are what is being discussed with this variance request. The minimum standards can be met for this property, but the question is whether the business can operate properly given the particular use and is a business decision that Dad's Ice Cream needs to make and not the city.

Jonathan Russell asked how long Dad's Ice Cream has been at this location. Mr. Gilbert responded that he has been located at this property since November of 2008. He stated that he was not made aware of the landscaping and fencing regulations until after he had moved onto the property which was February of 2009. He stated that he bought the Dad's Ice Cream business on August 1, 2008.

Rosi Haidenthaller explained that when any property comes up for a change of use or Conditional Use, the city is committed to beautification of the city. There are a lot of complaints and issues with unsightly looking commercial areas which is the reason the

city is enforcing the standards and to bring nonconforming properties into compliance. Mr. Gilbert stated that the landscaping requirement may not make a difference because it is all concrete and looks better than over grown vegetation. He stated they are at the site only six months of the year because of the nature of their business. He stated that the adjacent property that has overgrown vegetation and weeds and is unsightly. He stated that during the winter months the vegetation dies anyway and so the landscaping is only beautiful half the year and concrete looks better than landscaping.

Mark Drazich, 2366 East Cinnabar Lane, Salt Lake City, stated that he is the owner of the property in question. He stated there are 14 offices in this building and if the variance is not granted there will not be enough parking. He stated if Dad's Ice Cream does not purchase this property and another tenant comes along, there still will not be adequate parking if the other offices are utilized and that the Dad's Ice Cream is not utilizing the other office space.

Wendell Coombs stated that the landscaping requirements will still need to be met with any new business that wishes to locate on this property. Mr. Drazich stated that he purchased this property in 1993 and he and two other businesses, Intermountain Foods and Kimball Construction, have occupied the property. In 1980 Mr. Steve Phillips of Unlimited Business Exchange did some alterations to the building and added six offices to the property and that was approved by the city. Kimball Construction and Intermountain Foods also received city approval for business operation. The only reason that he signed the paper and put a \$2,500 deposit, was that he would have an opportunity to get a variance.

Jim Hendrickson, 266 East Lindon Way, stated he is representing Murray City Shade Tree and Beautification Commission. Mr. Hendrickson stated he visited the property and the existing landscaping is not maintained and does not add to the community. He stated that the Shade Tree and Beautification Commission would recommend that the variance be denied.

Jason Kinder, 161 West 4500 South, stated he is with Dad's Ice Cream. Mr. Kinder stated that he is a business partner with Mr. Gilbert. He stated that the difficulty he is experiencing is that since 1977 the requirement for the landscaping has existed, but perhaps was overlooked or forgotten, etc. When they found this property, fence lines were already established and the parking lot was striped and they were able to accommodate their business parking needs based on how the property existed at that time. The difficulty that now exists is that they moved onto the property with the understanding that with the established fence lines he should be able to move in as it existed. He stated that pavement is low maintenance and there isn't a weed problem or vegetation overgrowth problem on the property and Utah is a dry climate and by leaving the property as it exists would help conserve water usage in a dry climate.

Chad Wilkinson clarified that the city staff reviews the nature of the business as it relates to the amount of office/building space and not what was there before or what could possibly move on the property. Based on the Dad's Ice Cream use, which is predominately a distribution facility, it was determined that there could be adequate parking on site with a couple of offices as proposed and was not based on 14 office spaces.

Wendell Coombs stated that if the 14 office spaces were to change in the future, that change would still need to receive city approval and it is unknown whether the new office use would be able to meet the parking requirements but that is not an issue at this time. Mr. Wilkinson concurred.

Rosi Haidenthaller asked if the plans given to the Board are the same plans that were given at the Site Plan Review meeting in February of 2009. Mr. Wilkinson responded in the affirmative. He stated that the landscaping shown on the plans consists of mostly rock.

Rosi Haidenthaller stated the variances requested are on the east side of the property and also includes a 5 foot landscaping adjacent to the parking within the yard area. Ms. Haidenthaller asked if there is any way to compromise on this request to help this business stay in Murray and still fulfill the landscaping needs.

Wendell Coombs asked the length of the landscaping on the east boundary line. Mr. Wilkinson responded he was unsure but needs to be 10 feet wide for the entire length of the property, less the drive approach.

Rosi Haidenthaller stated there is no curb and gutter adjacent to the six foot chain link fence which is all asphalt eastward to the property. Mr. Wilkinson stated that the landscaping should be installed at this location and is typical for this zone. The ordinance requires fences to be setback 10 feet from the front property line. Mr. Wilkinson indicated there are properties along the street that have met the 10 foot frontage landscaping requirement and is a requirement for all properties in the M-G-C zone. In order to approve a variance there must be some type of uniqueness to the property that is different from other similarly zoned properties or some type of a hardship. He stated that there are certainly nonconforming properties within the city limits. He stated that the city staff is recommending that there is no apparent uniqueness or circumstance for this property and a previous approval showed landscaping that was not installed for whatever reason. It is unfortunate that the property has been out of conformance to this point and has now caused a problem for the new tenants. He stated that the business located onto the property prior to getting approvals from the city.

Jonathan Russell commented that the Board has the responsibility of helping property owners and potential owners of this property to utilize it, but the Board also has the responsibility to uphold the city's regulations. He stated that the Board must adhere to certain guidelines and if they were to grant a variance it would set a precedence. He stated there does not appear to be any uniqueness or hardship associated with this property. He stated that financial hardships cannot be considered as per state law. He stated that he hopes this business can make this property work for them and to be able to stay on the property. Jonathan Russell stated based on the above mentioned information he made a motion to deny the variance. Seconded by Joyce McStotts.

Call vote recorded by Chad Wilkinson

A Ms. McStotts
A Mr. Coombs
A Mr. Russell
N Ms. Haidenthaller

Motion passed 3-1.

Joyce McStotts made a motion to approve the Findings of Facts for Case #1383, Dad's Ice Cream, as written. Seconded by Jonathan Russell.

A voice vote was taken. Motion passed 4-0.

## CASE #1384 – DELYNN BARNEY – 4902 S Box Elder Street – Project #09-51

DeLynn Barney was the applicant present to represent this request. Chad Wilkinson, Community Development Planner, reviewed the location and request for an expansion of a nonconforming use for the property located at 4902 South Box Elder Street. The applicant is proposing a garage addition on an existing detached single family residence located in the M-G-C zoning district. Detached single family residential uses are not permitted in the M-G-C zone and therefore the existing use is considered nonconforming. The proposed garage is shown to be located 20 feet from the front property line which meets the required front yard setback for the zoning district. The M-G-C zone does not have a minimum side yard setback provided the structure meets applicable building and fire codes related to fire resistive construction. Murray City Code 17.52.040 allows for a building or structure occupied by a nonconforming use, or a building nonconforming as to height, area, or yard regulations to be added to, enlarged or moved to another location on the lot subject to authorization by the Board of Adjustment. The proposed expansion is consistent with the purpose of this title as it allows for a reasonable expansion of an existing use without an unreasonable impact on adjoining properties. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development staff finds that the proposal meets the standards for an expansion of a nonconforming use subject to meeting all of the requirements of the building and fire codes.

DeLynn Barney, 4902 South Box Elder Street, stated he and his mother own the property in question. Mr. Barney stated his parents built the property in 1963 which was a residential zone and the properties were all 40' X 150'. He stated over the years it has changed to different zonings and is now a manufacturing zone. Throughout the entire time since 1963 this property has been a residential use. He stated that he wishes to construct a new garage for safety and security of the property and to improve the visual appearance of the property. There are a couple of homes in the area that do have garages, one of which is directly to the north. Mr. Barney stated to the north is a large building where a person also resides and the building extends the entire width of the property. Across the street is also a home with a garage. The garage does meet the minimum 20 foot front yard setback.

No comments were made by the public.

Rosi Haidenthaller asked Mr. Barney if he will be able to access both the front and back of the garage. Mr. Barney responded that he will be able to access both the front and back of the garage and will be a straight through garage. There is no access from the back of the property to the garage and the garage is setback quite a ways from the rear property line and there is plenty of area in the rear yard.

Rosi Haidenthaller asked if the historical overlay district requires that the garage be constructed of certain building codes. Chad Wilkinson responded that the building codes require the garage to be constructed on fire resistive materials with a zero lot line. Mr. Barney indicated because the garage is at a zero line setback, there can be no windows facing the side property line, but may install sky lights for more sunlight.

Mr. Wilkinson stated that the planning staff received one email today from the property owner to the south expressing concerns relating to the nearness of the structure to the property line and also the location of the property line.

Joyce McStotts made a motion to grant approval of the request for a expansion of a nonconforming use (a garage) for the property located at 4902 South Box Elder Street subject to meeting the building and fire codes as required. Seconded by Jonathan Russell.

Call vote recorded by Chad Wilkinson

A Ms. McStotts
A Mr. Coombs
A Mr. Russell
A Ms. Haidenthaller

Motion passed 4-0.

Rosi Haidenthaller made a motion to approve the Findings of Fact for Case #1384, DeLynn Barney, as written. Seconded by Jonathan Russell.

A voice vote was taken. Motion passed 4-0.

# CASE #1385 - THE HIGHLANDER CLUB - 6194 South Highland Drive - Project #09-53

Lynn Peterson and Layne Peterson were the applicants present to represent this request. Chad Wilkinson reviewed the location and request for expansion/alteration of an existing nonconforming use and structure for the property located at 6194 South Highland Drive. The applicant proposed an expansion of approximately 300 square feet to the existing Highlander Club. The proposed expansion is to be used for storage purposes. The Highlander Club property was annexed from Salt Lake County in 2002. The property is located in a C-N-C zone. The Highlander Club is classified as a drinking place which includes bars, taverns, etc., and is not an allowed use in the C-N-C zone. Therefore, the use is considered nonconforming. The structure is also nonconforming in relation to several standards including setbacks, parking and landscaping. proposed addition is located on the east side of the structure and meets the setback requirements for the zone district. The height of the proposed addition is 11 feet 8 inches which is well under the maximum height allowed in the zone. The addition will generally follow the existing building line on the west side of the structure. Parking on the site will not be impacted by the addition and the small size and use of the addition as storage is not anticipated to generate additional traffic on the site. The proposed addition will allow for a reasonable expansion of an existing nonconforming use and is consistent with the purposes of the title which include fostering the City's residential, business and industrial development. There are no anticipated impacts to traffic generation to and from the site or any impacts to the existing parking on the site. Based on the review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development staff finds that the proposal meets the standards for an expansion/alteration of a nonconforming use or development and recommends approval.

Layne Peterson, 101 West 6025 South, stated he is the owner of the Highlander Club. Mr. Peterson stated that the building is older and this property was annexed into Murray City in 2002. He stated that he is attempting to upgrade the building. The storage is a small area for the purpose of being able to access the refrigerators from the kitchen. There will be no public use with the proposed expansion. He stated that he purchased the property in the mid 1970's. He stated the he will be putting the power lines underground and will modernize the building.

Rosi Haidenthaller asked if the addition will affect the amount of parking at the rear of the building. Mr. Wilkinson responded the addition will not impact the parking.

No comments were made by the public.

Rosi Haidenthaller asked if additional landscaping will be required with this addition. Mr. Wilkinson responded that this is an expansion of a nonconforming use and structure and the expansion itself doesn't require a variance, but since it is a nonconforming addition it does require Board of Adjustment approval. He stated if this were a new business or a change of use, it would require the landscaping to be installed. Mr. Wilkinson explained if the addition encroached into the setbacks it would require a variance, but that is not the case.

Joyce McStotts made a motion to approve the request for an expansion/addition for a nonconforming use and structure of the Highlander Club subject to meeting all building and fire codes as required. Seconded by Rosi Haidenthaller.

Call vote recorded by Chad Wilkinson

A Ms. McStotts
A Mr. Coombs
A Mr. Russell
A Ms. Haidenthaller

Motion passed 4-0.

Rosi Haidenthaller made a motion to approve the Findings of Fact for Case #1385, The Highlander Club, as written.

A voice vote was taken. Motion passed 4-0.

#### OTHER BUSINESS

There was no other business.

Meeting adjourned.

Chad Wilkinson, AICP Community Development Planner